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NEW DELHI, MONDAY, JULY 4, 1955

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 22nd June 1955

S.R.O. 1428.—Whereas the election of Sarvashri S. Dharam Singh and Kirpal Singh as members of the Legislative Assembly of the State of Pepsu, from the Budhlada constituency has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Norata Singh, son of S. Munshi Singh, Village Baretta, P.S. Baretta, District Bhatinda (PEPSU);

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

ELECTION TRIBUNAL, BHATINDA

S. Norata Singh s/o Munshi Singh of Baretta—Petitioner.

Versus

1. S. Dharam Singh s/o Hira Singh of Dalal Singh Wala
2. S. Kirpal Singh s/o Santa Singh, village Fatehgarh Sahnawal
3. S. Dalip Singh s/o Hazara Singh of Mansa
4. S. Dasondha Singh s/o Munshi Singh of Budhlada
5. S. Chanan Singh s/o Waryam Singh, village Samaon
6. S. Narotam Singh s/o Chattar Singh, village Chakan
7. Sh. Lakhi Ram s/o Mollar of Budhlada
8. S. Sarwan Singh s/o Partap Singh, village Bir Khurd
9. S. Santa Singh s/o Attar Singh, village Samaon
10. S. Kartara s/o Sudha Singh, village Manjo Kalan
11. S. Gajjan Singh s/o Jawahar Singh, village Maghanian
12. S. Inder Singh s/o Gurdial Singh, Pleader, Mansa—Respondents.

Chhakan Lal, Chairman.

Kul Bhushan and G. M. Kekre—Members.

ELECTION PETITION No. 13 OF 1954

ORDER

The petitioner Norata Singh and the 12 respondents were candidates for election to the two seats in the Budhlada Double-Member Constituency of Patiala and East Punjab States Union Legislative Assembly held in February and March, 1954. The poll took place on 28th February and 2nd March, 1954, and as a result of the same respondent Nos. 1 and 2 were declared as elected. This is a petition under section 81 of the Representation of People Act calling in question the election of respondent Nos. 1 and 2 on the following grounds:—

1. That the nomination paper of Shri Kirpal Singh respondent No. 2 was liable to be rejected on the ground that he had not attained the age of 25 years as prescribed by the Constitution of India on the date of the filing of his nomination papers (9th January 1954) or their scrutiny (13th January 1954).

2. That the election of Shri Dharam Singh respondent No. 1 is void on the following grounds:—

(i) that his nomination paper was not accompanied, by any form of appointment of election agent, as required by Rule 11(A) of the Representation of the People (Conduct of Election and Election Petitions) Rules, 1951.

(ii) that the Return of election expenses filed by him was not in order on the following grounds:—

(a) that his signatures on it were not duly attested,

(b) that it was not accompanied by the declaration provided under section 76(2) of the Representation of People Act,

(c) that it did not include expenses incurred on the use of a jeep on 2nd March 1954 (*vide* particulars given in annexure 'A'),

(d) that it did not include expenses incurred on the purchase of voters lists,

(e) that it suppressed certain items of expenditure incurred by Respondent No. 1 in connection with the journey expenses of his workers.

3. That the corrupt practice of personation was committed by respondent No. 1 with the connivance and abetment of his agents on a large scale (*vide* details given in annexure 'B').

4. That the major corrupt practice of procuring a jeep by the agents of respondent No. 1 for the conveyance of the voters with the active connivance of his election agent and other agents and party workers was committed by respondent No. 1 (*vide* details given in annexure 'C').

5. That the agents of respondent No. 1 falsely propagated the rumour that the petitioner was not a serious candidate for election and had withdrawn after accepting money from the Congress.

6. That the petitioner's Munim Ram Lal was beaten up 3 or 4 days before the date of poll, in Bareta Mandi, by the workers of the Communist party by whom respondent No. 1 was set up as a candidate and it was given out that the other workers of the petitioner would also receive a similar treatment.

7. That it was given out on behalf of respondent No. 1 that if the electors did not vote for him he (respondent No. 1) would be taken to Chandni Chowk and executed like Guru Teg Bahadur.

8. That the activities of the Communist party which sponsored respondent No. 1's candidature interfered with the free exercise of the right of vote.

The respondent Nos. 1 and 2 contested the petition. They traversed all the averments in the petition and raised the following further pleas:—

1. That the election petition was not verified according to law and was liable to be rejected on that account.

2. That the petition did not lie in the present form.

3. That the petition was liable to be rejected as the petitioner had failed to file a separate address sheet.

The petitioner was examined by the Tribunal on 16th October 1954 and in the course of the statement, which he made on that day, he introduced some particulars relating to alleged corrupt practices committed by the respondents.

The respondent made an application raising the plea that it was not open to the petitioner to introduce any fresh particulars to amplify the petition after the expiry of the period of limitation.

On the above pleas the following issues were framed:—

1. Whether respondent No. 2, S. Kirpal Singh possesses the requisite age qualification to stand for the election, if so, what is the effect?

2. Whether there was total absence of appointment of election agent as prescribed under Rule 11-A of the Representation of People (Conduct of Election and Election Petition) Rules, 1951? If so, what is its effect?

3. Whether the return of election expenses lodged by respondent No. 1

- (a) did not bear his signatures duly attested,
- (b) was not accompanied by a declaration provided by section 76(2) of Act,
- (c) did not show expenses incurred, if at all, over the use of a jeep on 2nd March 1954, as specified in annexure 'A'.
- (d) did not show expenses incurred, if at all, over purchases of voters lists, or
- (e) concealed names and descriptions of workers to whom T.A. was paid, if at all?

If so, what is its effect?

4. Whether the corrupt practice of impersonation was abetted or committed with the connivance of any agent of respondent No. 1 on 28th February 1954 or on 2nd March 1954, as specified in annexure 'B' appended to the petition, and if so, what is its effect?

5. Whether a jeep was procured for the conveyance of the electors on 2nd March 1954 by or with the connivance of any agent of respondent No. 1, as specified in annexure 'C' appended to the petition? If so, what is its effect?

6. Whether it was falsely published by any agents of respondent No. 1 that the petitioner was not a serious candidate for the election and had taken money from the Congress and was not contesting at all? If so, what is its effect?

7. Whether the petitioner's Munim Ram Lal Kapur was beaten three or four days before the polling date in Bareta Mandi by the Communist Party workers and it was advertised by the latter in the Ilaqa that other will also be beaten likewise? If so, what is its effect?

8. Whether a threat was held out to the electors that if any of them did not vote for respondent No. 1, he would be taken to Chandni Chowk, Delhi, and executed like Guru Teg Bahadur? If so, what is its effect?

9. Whether respondent No. 1 was a member of the Communist Party, and whether the activities of that Party interfered with the free exercise of the electoral right of vote? If so, what is its effect?

10. Whether the present election petition is not verified in accordance with law and is therefore liable to be rejected?

11. Whether the election petition does not lie in its present form?

12. Whether it was necessary for the petitioner to have filed a separate address sheet? If so, what is the effect of the petitioner not having filed it?

13. To what relief, if any, is the petitioner entitled.

14. What orders, if any, under sections 98 & 99 of the Representation of People Act, 1951, should be passed in this case?

15. Whether to-day's statement by or on behalf of the petitioner amounts to furnishing fresh instances of corrupt practices after the period of limitation prescribed for the presentation of the election petition is over? If so, what is its effect?

Issue No. 1.—The onus of proving that respondent No. 1 did not possess the statutory qualification of being 25 years of age, as prescribed by Article 173B of the Constitution of India, on the date of filing of his nomination papers or their

scrutiny, had originally been placed on the petitioner. But by our order dated 12th March 1955, the issue was amended and the onus was placed on respondent No. 2.

In support of his plea that he had attained the age of 25 at the time of filing of his nomination papers or their scrutiny the respondent No. 2 has produced both oral and documentary evidence. The documentary evidence consists of the following documents:—

1. Five certified copies from the Birth Register *viz*:—

- (a) Ex. R2/3 showing that a son was born to Santa Singh of Sanhewal on 20th February 1984 (Bikrami), the entry in the register having been made at the instance of Bishana Chaukidar;
- (b) Ex. R2/4, showing that a son was born to Santa Singh of Sanhewal on 5th Besalt 1982;
- (c) Ex. R2/5, showing that a son was born to Santa Singh of village Sanhewal on 19th Phagan 1979;
- (d) Ex. R2/6, showing that a son was born to Santu son of Tolu of village Sanhewal on 21st Jaith, 1974;
- (e) Ex. R2/7, showing that a son was born to Santa Singh of village Datewas on 15th April 1915 A.D.

2. Medical certificate Ex. R2/a given by Dr. Bhagwant Singh, Assistant Surgeon, Bhatinda (R.2.W.1) to respondent No. 2 on 21st June 1952 giving the opinion that respondent No. 2 was about 25 years old at the time;

3. Ex. R2/2, certificate of discharge of respondent No. 2 from the Army giving his age as 22½ years on the date of his discharge (8th March 1950).

Oral evidence produced by respondent No. 2 consists of the statements of Sant Kaur, R.2.W.2., Har Kaur, R.2.W.11, Sant Singh R.2.W.12, Nand Singh R.2.W.13, Inder Singh R.2.W.14, Arjan Singh R.2.W.15, Nanum Chaukidar R.2.W.17, Uttam Singh R.2.W.18 and Budh Ram R.2.W.19.

Ex. R.2.W.2 Sant Kaur is the 'Dai' who attended the birth of respondent No. 2. According to her respondent No. 2 was born in the month of Jaith, 28 years ago. Har Kaur R.2.W.11 and Sant Singh R.2.W.12 are respectively the mother and father of respondent No. 2. They stated that they had 6 sons including respondent No. 2, out of whom two are dead, that one of them (Mohan Singh) was born at Datewas, that the rest were born at Sanhewal, that respondent No. 2 is the youngest of the lot and is now 28 years old. Nand Singh R.2.W.13 a cousin of respondent No. 2 stated that the latter was born about the middle of Jaith 1984. According to Inder Singh R.2.W.14 respondent No. 2 was born in Chait, 1984. Arjan Singh R.2.W.15 an uncle of respondent No. 2 gave the latter's age as 28 and stated that he was born in Jaith, 1984. However, he could not say whether the year 1984 related to the Bikrami or to the Christian era. Nanun Chaukidar of village Datewas happened to visit Sanhewal in '1984 A.D.' for purchasing goats, stayed at the house of Santa Singh father of respondent No. 2 for a day and during his stay a son was born to Santa Singh. Uttam Singh R.2.W.18 stated that a son was born to Santa Singh father of respondent No. 2 at Datewas in Besakh 1972. Lastly Budh Ram R.2.W.19 deposed to the effect that 27 or 28 years ago in the month of Jaith 1984 Bk. a son was born to the mother of respondent No. 2 and that on being informed of the same by her he made a report to the Lamberdar for making an entry in the birth register.

On the other hand the petitioner places his reliance on two applications PW1/1 and PW1/2 made by respondent No. 2 for admission to the Giani Examination of the Punjab University held in June, 1951. These applications were produced in original by P.W.1 Shri Birj Lal, Superintendent, Office of the Punjab University at Solan, In Ex. PW1/1, the date of the birth of respondent No. 2 is given as 10th February 1929 and in PW1/2 it is given as 10th March 1929.

We shall now proceed to discuss the worth of the evidence led by the parties in connection with this issue. We first take up the documentary evidence:—

Birth entries:—Ex. R2/3, R2/4, R2/5, R2/6, R2/7.

Respondent No. 2's case is that his father Santa Singh had 5 sons (two of whom are now admittedly dead), that four of them including respondent No. 2 were born in village Sanhewal and entries Exs. R2/3, R2/4, R2/5 and R2/6 relate to them and the fifth was born at Datewas and the entry R2/7 refers to him. It is common ground between the parties that respondent No. 2 is the youngest son of his father. It is, therefore, argued on his behalf that the birth

entry R2/3 which is the latest in point of time, relates to him and that according to it he had attained the age of 25 when he filed his nomination papers. After carefully considering the matter we are unable to accept this contention. In the first place it is not clear that the entries R2/3, R2/4 and R2/5 at all relate to the sons of Santa Singh father of respondent No. 2 as they do not give Santa Singh's parentage, as distinguished from Ex. R2/6 which certainly relates to a brother of respondent No. 2 as it sets out correctly the name of the boy's father and grand-father. Now it is clear from the evidence of Ajmer Singh P.W. 36 and Gujar Singh P.W. 37 that besides Santa Singh (father of respondent No. 2) there are two other persons in village Sanhewal bearing the same name, that one of them has 5 sons and the other has two sons. This fact is also corroborated by the evidence of respondent's witness Hazura Singh (R.2.W.4). In the face of the fact that there are three Santa Singhs in village Sanhewal, it must be established by cogent evidence that the three birth entries R2/3, R2/4 and R2/5 relate to the sons of Santa Singh son of Tolu (father of respondent No. 2) and not to any other person bearing that name. But there is no reliable evidence on the record on this point. A feeble attempt was made to connect Ex. R2/3 with respondent No. 2 by the evidence of Budh Ram R.2.W.19 who stated that he reported the birth of respondent No. 2 to the Lambardar in Sambat 1984. But the witness stands self-condemned by the entry itself according to which the birth was reported by Bishana Chaukidar and not by him. There is another aspect of the matter. According to respondent No. 2 one of his brothers was born at village Datewas (*vide* birth entry Ex. R2/7). But this entry clearly shows that it relates to the birth of a son to Santa Singh of village Datewas and not of village Sanhewal. Clearly, therefore, this entry cannot relate to a brother of respondent No. 2. If that is so then the question arises as to where the fifth son of Santa Singh (father of respondent No. 2) was born and when. In the absence of the specification of names in the copies of birth entries the possibility of respondent No. 2 being the fifth son (whose date of birth has not been proved) cannot be ruled out. Therefore we find it extremely difficult to hold that Ex. R2/3 relates to respondent No. 2. In the circumstances we hold that birth entries Ex. R2/3, Ex. R2/4, Ex. R2/5, Ex. R2/6 and Ex. R2/7 cannot help the respondent No. 2 in determining his age.

Discharge certificate R/2.—This document is obviously of little value as it does not give the exact date of birth of respondent No. 2.

Medical certificate Ex. R2/1.—This document is equally worthless. According to it the respondent No. 2 was "about 25 years of age" on 21st June 1952. But Dr. Bhagwant Singh R.2.W.1 made the following statement in cross examination:—

"By about 25 years' I mean 24 years or even more than 25 years. It is difficult to say exactly but the age might have been a few months less than 24 years. After the age of 18 years it is not possible to give the exact age of a person and there is always a margin or error of one to two years on either side".

In the face of the above statement the medical certificate Ex. R2/1 is of no value in determining the exact age of respondent No. 2. This disposes of the documentary evidence of respondent No. 2.

We now come to the oral evidence. In our judgment that evidence also does not improve matters, at all. In the first place all oral evidence is inherently weak and must be accepted with great caution. Secondly most of the witnesses who have given evidence on behalf of respondent No. 2 are interested. For instance Sant Kaur R.2.W.2 is the family nurse. Har Kaur R.2.W.11 and Santa Singh R.2.W.12 are the parents of respondent No. 2, Nand Singh R.2.W.13 is his first cousin and Arjan Singh R.2.W.15 and Uttar Singh R.2.W.18 are his uncles. The evidence of such persons must be accepted with a grain of salt. Apart from these considerations, the oral evidence on the question of the age of respondent No. 2 would not stand scrutiny even for a minute on merits. Sant Kaur R.2.W.2 had no difficulty in giving the date of the birth of respondent No. 2, but could not supply similar information regarding his other brothers though she officiated at their births as well. Similarly the parents of respondent No. 2 could not give the ages of their other sons. Again according to Indar Singh R.2.W.14 respondent No. 2 was born in Chait, 1984 while according to all other witnesses he was born in Jaith, 1984. Then again though Arjan Singh R.2.W.15 parrot-like gave the year of the birth of respondent No. 2 as 1984, he could not say whether that year related to the Christian or to the Bikrami era. The evidence of Nanu Chaukidar R.2.W.17 according to whom respondent No. 2 was born in village Sanhewal in 1984 is of all the least impressive. He belongs to

Datewas and went to village Sanchwal for purchasing goats. But strangely enough he did not purchase any goats there and instead purchased them at Fatta, 8 miles away from Sanehwal. Again he gave the year of the birth of respondent No. 2 as "1984 A.D." Lastly so far as Budh Ram, R.2.W.19 is concerned we have already observed that he is contradicted by the birth entry R2/3 itself. It is impossible to place any reliance on evidence of such trumpery and partisan character, and we have no hesitation in rejecting the same.

So much for the Respondent No. 2's evidence. On the other hand the two original applications PW1/1, and PW1/2 which are admittedly signed by respondent No. 2 clearly give his date of birth either as 10th February 1929 or as 10th March 1929 and counted from either of these dates the respondent No. 2 was evidently below the age of 25 at the time of filing of his nomination papers or their scrutiny. Respondent No. 2 has failed to explain away the entries regarding his age in these applications satisfactorily. According to him he learnt of the date of his birth, according to the Bikrami era, from his father but made a mistake in converting the same into corresponding date of the Christian era in making entries in Ex. PW1/1. This explanation is too ridiculous to merit any notice. In the first place it was not necessary for respondent No. 2 to give his age according to the Christian era in his applications PW1/1 and PW1/2. At least we have not been referred to any rule of the Punjab University according to which such a course was necessary. Then again we are quite clear that the explanation which the respondent has now offered in the witness box is quite an after-thought. On the application of the petitioner respondent No. 2 was called upon to admit or deny his signatures on PW1/1 and PW1/2. In the written statement which the respondent filed on that occasion he merely challenged the correctness of the dates and did not offer the explanation that he now offers. In the circumstances we are unable to accept the belated theory, that the dates given in PW1/1 and PW1/2 are the result of an error in working them out. It is a well established principle of law that what a party admits to be true must be presumed to be true unless the contrary is established. We are decidedly of the opinion that the evidence produced by respondent No. 2 is too inadequate to rebut the presumption created by the entries in PW1/1 and PW1/2 against him (respondent No. 2) regarding his age. Accordingly we hold that while the respondent has failed to prove his age Exs. PW1/1, PW1/2 clearly establish that he was below 25 at the time of filing of his nomination papers or their scrutiny. We find this issue against the respondent No. 2.

Issue No. 2.—The petitioner, stated in the witness box, that when the nomination papers of respondent No. 1 were filed before the Returning Officer on 9th January 1954 they were not accompanied by any form of appointment of election agent as required by the mandatory provisions of Rule 11(A) of the Representation of People (Conduct of Election and Election Petition) Rules, 1951. Election Qanungo District Bhatinda (PW.9) produced the file containing the nomination papers filed by respondent No. 1 and other candidates. The file shows that the nomination papers of respondent No. 1 were also accompanied by four copies in Form 5A for appointment of election agents. Learned counsel for the petitioner however invited our attention to the fact that while two of these forms purport to be signed by respondent No. 1 on 6th January 1954, they were attested by the Superintendent District Jail Nabha (where respondent No. 1 was lodged as a detainee at the time) on 4th January 1954. Counsel argued that the forms of appointment of election agent could not be attested before they had been signed and that therefore they are not in order. But the file also contains two other similar forms which were signed by respondent No. 1 and attested by the Superintendent, District Jail on 6th January 1954, so that if the two forms to which our attention was invited by the learned counsel are defective the two which were both signed and attested on 6th January 1954 are not open to any objection whatsoever. In any case it is quite clear that the form of appointment of election agent did accompany the nomination papers and the petitioner's contention on this point is utterly devoid of force. This issue is, therefore, decided against the petitioner.

Issue No. 3.—Part (a). It is true that the signatures of respondent No. 1 on his return of election expenses are not attested by any authority. But we have not been referred to any rule under which such an attestation is necessary. We, therefore, decide this part of the issue against the petitioner.

Part (b) was not pressed and is decided against the petitioner.

Part (c). This part of the issue and issue No. 5 overlap each other. They will, therefore, be discussed together under issue No. 5.

Part (d). In connection with this part of issue No. 3 our attention was invited to the statement of Respondent No. 1's election agent Lal Singh R.I.W.26 in which he clearly admitted having purchased voters lists. It is also admitted on behalf of respondent No. 1 that the cost of the voters list is not included in his return of election expenses. A belated attempt was, however, made to explain away this omission. Sawan Singh R.I.W.28, another defeated candidate gave evidence to the effect that he purchased a set of voters lists at his expense and subsequently lent them for use to respondent No. 1 as he himself had meanwhile withdrawn from the contest. This evidence is on the face of it false, for the simple reason that if the voters list had really been borrowed by respondent No. 1 from Sawan Singh and not purchased there was no reason why Respondent No. 1's election agent Lal Singh R.I.W.26 should not have said so when he was examined. The explanation is clearly an after-thought, and cannot be accepted. It follows as a necessary corollary that the return of election expenses is incorrect to the extent that it does not include the cost of voters list which were purchased on behalf of respondent No. 1. The question for consideration, however, is whether this fact would bring respondent No. 1 within the mischief of section 124(4) of the Representation of Peoples Act. In this contention learned counsel for respondent No. 1 invited our attention to a case reported as 7 E.L.R. Page 301 in which it was held that "the word 'false' in section 124(4) which makes the filing of a false return of election expenses a corrupt practice, is not equivalent to 'incorrect' but means 'deliberately false', and implies a corrupt motive. Omission to include a minor item of expenditure would not therefore amount to a corrupt practice under section 124(4) where the total amount spent is much below the maximum allowed by law". The return of election expenses filed by the respondent shows that the total expenditure incurred by him amounted to Rs. 1779-15-9 while the maximum limit of expenditure permitted in a double member constituency is Rs. 7,000. Respondent No. 1 could, therefore, afford to incur a further expenditure of over Rs. 5,000 without coming within the mischief of section 124(4). It is not clear what the price of the voters list would be but it could not exceed a few rupees. There was, therefore, no point in suppressing this minor item of expenditure from the return of expenses. It appears to us that the omission is either due to carelessness or over-sight. In such an event the return of expenses cannot be termed as 'false'. In this connection we fully concur in the view expressed by the Election Tribunal in 7 E.L.R. Page 301 that the word 'false' in section 124(4) implies a deliberate attempt to suppress some items of expenditure in order to escape the application of Section 124(4). We cannot believe that it was the intention of the framers of section 124(4) to bring within its ambit such a minor slip as has occurred in the present case. We, therefore, hold that inspite of the fact that the return of election expenses does not include the price of the voters lists purchased by respondent No. 1 the fact does not amount to a corrupt practice within the meaning of Section 124(4).

Part (e). In connection with this part of issue No. 3 learned counsel for the petitioner again relied on the statement of Lal Singh R. I. W. 26 in which he admitted having visited Dharam Singh in Nabha Jail. Counsel argued that some sort of expenditure must have been incurred by Lal Singh in this connection and that since the same has not been included in the return of election expenses the same must be treated as 'false' within the meaning of section 124(4). We are unable to accept this contention. In the first place it is not clear that any expense was at all incurred. It is quite possible that Lal Singh may have gone to Nabha on foot or on a bicycle and may not have incurred any expense at all. But even if any expense was incurred it must have been a very small one and for reasons similar to those which we have given in connection with part (d) of this issue we are loath to declare the return of election expenses to be 'false' on that account.

Issue No. 4.—For proof of this issue the petitioner places his reliance on the evidence of Jagdish Singh P. W. 10 who was acting as a Polling Agent for Narotam Singh respondent at Kishangarh polling station at the time of the election. According to the witness, one of the electors was found falsely to personate for another, but the bubble was pricked on the witness's challenging his identity. Though the witness did not name the elector who was personating, reference was apparently made to Surjan Singh who was prosecuted and convicted u/s 171(F) I.P.C. in connection with this incident, *vide* copy of judgment Ex.PW38/1. The petitioner has also filed a copy of a statement Ex. PW38/2 made by the said Surjan Singh at the time of his trial. According to that statement he personated at the instigation of the Communists. The statement of Surjan Singh Ex.PW32/2 cannot be treated as evidence in this case. At least we have not been referred to any section of the Indian Evidence Act under which this could be done. Therefore, that statement must be eliminated from consideration. If that is done there is nothing else to show at whose instigation Surjan Singh committed the offence of false personation. Learned

counsel for the petitioner, however, argued that even when such is the case the respondent No. 1 is guilty of a minor corrupt practice u/s 121(1). This argument is purely specious. Surjan Singh may be guilty of a minor corrupt practice u/s 124(1) and may suffer the penalties provided by the Representation of People Act or any other law. But this fact alone would not effect respondent No. 1 prejudicially unless it is shown that the false personation was procured or abetted or attempted by him or his agent or by any other person with his connivance or that of his agent. Learned counsel for the petitioner cited section 100 (2) (a) of Representation of People Act as on authority for the proposition that the election of respondent No. 1 should be declared void, on the ground that Surjan Singh has been proved to be guilty of a minor corrupt practice under section 124(1). We find ourselves unable to accept this contention. Before the election of a returned candidate can be declared void under section 100(2) (a) of Representation of People Act, 1951, it must be shown that the election was "procured or induced or the result of the election materially affected by any corrupt or illegal practice". There is absolutely no evidence to show that respondent No. 1 was returned as a result of false personation by Surjan Singh. As a matter of fact Surjan Singh did not cast his vote at all as he was arrested before he had the occasion to do so. Under the circumstances the attempt at false personation on the part of Surjan Singh would not affect the case. Therefore we find this issue against the petitioner.

Issue No. 5 and Part (c) of Issue No. 3.—According to annexure 'C' the charge forming the subject matter of this issue is that a jeep flying the Red Flag was used for carrying voters from village Khudal Kalan to Bareta Polling Station on 2nd March 1954. The petitioner produced the following witnesses in this connection:—

Karpal Singh P.W. 2, Gujjar Singh P.W. 3, Kurra Ram P.W. 6, Bhagwan Dass P.W. 12, Norata Ram P.W. 13, Sher Singh P.W. 15 and Niranjan Singh P.W. 22. Some of the witnesses stated that two motor cars were used for conveying the electors. Some stated that only a jeep was used and that it made 15 to 20 trips for the purpose. Shri Bhag Ram P.W. 28 who worked as a Presiding Officer at Bareta Polling Station on 2nd March 1954 stated that one of the electors admitted before him that he had travelled in a jeep up to the polling station. After carefully considering the evidence on the record we are clearly of the opinion that the petitioner must fail on this issue. So far as the evidence of Shri Bhag Ram is concerned it proves next to nothing. He merely states that one of the electors admitted before him that he travelled in a jeep upto the polling station but it is not at all clear as to who supplied the jeep. It may be that the jeep was owned by the elector himself or a friend of his who gave him a lift. In the absence of anything on the record to show that the jeep was supplied by the respondent No. 1 the evidence of Shri Bhag Ram cannot help the petitioner. So far as the rest of the evidence is concerned it is highly unsatisfactory. In the first place it is discrepant, in one material particular. The petitioner's case as laid down in his pleadings is that only one jeep was used by respondent No. 1 for the conveyance of the voters. But some of the witnesses have improved upon that story and stated that two motor cars were plied 15 to 20 times. Again no witness was able to fix the identity of the jeep or the motor cars used by giving their registration numbers or to disclose the names of the drivers of those vehicles. Lastly though according to the evidence on the record more than one vehicle made 15 to 20 trips in conveying the electors the witnesses were able to give the name of only one such elector. It is impossible for us to believe, that if motor vehicles were used on the scale alleged by the petitioner, it should not be possible for him to fix the identity of at least some of the electors, who were carried. In our judgment the evidence produced by the petitioner is too inadequate to carry conviction. We, therefore, decide these issues in the negative.

Issue No. 6.—According to para 1 of annexure D, the petitioner's case is that the workers of respondent No. 1 carried on a false propaganda to the effect that "the petitioner is not a serious candidate for the election. He has taken money from the Congress and is not contesting at all". The petitioner produced a considerable number of witnesses in support of his plea. They gave evidence to the effect that at the numerous election meetings held in the interest of respondent No. 1 the rumour was sedulously propagated that the petitioner had retired from the contest after accepting money from another candidate namely Narotam Singh. This evidence is in direct conflict with the petitioner's case as disclosed by him in para 1 of annexure D, in which it was alleged that the petitioner had accepted money from the Congress and not from Narotam Singh. In view of this glaring discrepancy between the pleadings and the evidence we have no hesitation in rejecting the evidence and decide this issue against the petitioner.

Issue No. 7.—The petitioner's case covered by this issue is stated in para. 2 of annexure D as follows:—

"That my Munim Ram Lal Kapur was beaten at about 11 P.M. 3 or 4 days before the polling date in Bareta Mandi by the communist party workers and the follow out of fear stopped working for me and there spread great panic in Bareta proper and neighbouring villages. This fact was advertised by the communist party in that illaqa that like the munim others will also be beaten".

The petitioner examined the following witnesses in connection with this issue:—

Ram Lal P. W. 8, Panna Lal, P.W. 11, Bhala Ram P. W. 17, and Babu Ram P. W. 35.

The story of his being beaten up was related by Ram Lal P. W. 8 himself in the following terms:—

He was working as Munim for the petitioner at the time of the General elections. At 1 A.M. on 22nd February 1954 he was called from his house by two persons. On his coming out he was assaulted by those persons and they told him that unless he stopped working for the petitioner and helped Dharam Singh respondent No. 1 he would be killed. On his raising a hue and cry Panna Lal P. W. 11 and one Norata Ram came up and rescued him. As a result of the beating received by him and out of fear Ram Lal resigned the service of the petitioner. Panna Lal P. W. 11 stated that while he was proceeding from the railway station to his house he heard a hue and cry at 1-30 A.M. on 22nd February 1954. On proceeding to the place from which the hue and cry was coming he saw two persons standing near Ram Lal P. W. They told the witness that unless he voted for Dharam Singh he would also be treated in the same manner as Ram Lal had been treated. Babu Ram P. W. 35 a resident of Bareta Mandi stated that one of the speakers at an election meeting convened in the interests of Dharam Singh respondent No. 1 stated that unless electors voted for respondent No. 1 they would meet the same fate as Ram Lal Munim of the petitioner had met. After a careful consideration of the matter we are unable to accept the evidence produced by the petitioner. In the first place that evidence is discrepant. According to the recitals in para. 2 of annexure D the incident related by the witnesses occurred 3 or 4 days before the polling. Polling took place on 28th February 1954 and 2nd March 1954. Therefore according to the petitioner's version Ram Lal was beaten on the 24th or 25th February, 1954. But according to the evidence produced by the petitioner Ram Lal got a beating on 22nd February 1954. Again according to the petitioner the occurrence referred to by the witnesses took place at 11 P.M. but according to the eye witnesses produced it happened at 1 or 1-30 A.M. Apart from these discrepancies we cannot believe that if Ram Lal P. W. 8 got a beating at the hands of some of the workers of respondent No. 1 he would not have lodged a report at the police station. The explanation given by him for this omission is that he was afraid of the consequences in view of the threats held out by the persons who gave him the beating. Even if it is true that Ram Lal was too intimidated to make a report we cannot believe that the petitioner whose interests were vitally affected by the beating given to his Munim would have refrained from lodging a report at the police station. If he was also deterred by fear of consequences he may as well have retired from the contest altogether. For the above reasons we regard the evidence produced by the petitioner as highly unsatisfactory and cannot accept it. We, therefore, decide the issue against the petitioner.

Issue No. 8.—So far as this issue is concerned the petitioner's case is contained in para. 3 of annexure D in the following terms:—

"That Propaganda on a very extensive scale was done that if votes are not cast in favour of Sardar Dharam Singh candidate of the communist party he will be taken to Delhi Chandni Chowk and executed like Guru Teg Bahadur".

A large number of witnesses gave evidence in support of the above allegation. It is impossible for us to swallow that evidence. We cannot believe that in the enlightened 20th Century any elector would seriously accept the yarn that if respondent No. 1 was not elected he would be executed in Chandni Chowk like Guru Teg Bahadur. Apart from this even if the story was accepted we do not see how it amounts to undue influence u/s 123(2) as no harm was threatened to the electors. At best it was an attempt to glorify respondent No. 1 or to invest him with the bale of martyr. This can hardly be treated as undue influence u/s 123(2). We, therefore, decide this issue against the petitioner.

Issue No. 9.—The petitioner's case with reference to this issue is not out in para. 4 of annexure D. It is to the following effect:—

"That the popular Government was suspended in PEPSU and the President's Rule was brought in due to activities of the dacoits and communists workers anti-social and terrorising activities that Shri Dharam Singh is a detenu, because his being at large was not safe for the State's peace and tranquility. He belonged to the Red Party and was one of their most active workers. The communist party in tenant villages created havoc took forcible possessions stopped payment of batai, and rents turned out the land owing classes in some of the villages including Kishangarh, Bakhshiwal, Khatiwala, Kishangarh Farhani and Member of other villages. They were a terror through out the constituency and people feared and out of that fear, intimidation and undue influence did not vote freely and out of compulsion, fear, intimidation voted for the communist candidate Dharam Singh who is neither well read nor has any experience of Legislature".

In support of the above allegations the petitioner produced the following witnesses:—

Karpal Singh P. W. 2, Gujar Singh P. W. 3, Kaura Ram P. W. 5, Inder Singh P. W. 7, Bhagwan Dass P. W. 12, Norata Ram P. W. 13, Ram Kishen P. W. 14, Sher Singh P. W. 15, Nand Singh P. W. 16, Bhala Ram P. W. 17, Kishen Singh P. W. 18, Shadi Singh P. W. 20, Chand Singh P. W. 21, Niranjan Singh P. W. 23, Laq Ram P. W. 24, Inder Singh P. W. 25, Kartar Singh P. W. 29, Ganda Singh P. W. 30, Hari Singh P. W. 31, Harnam Singh P. W. 34 and Babu Ram P. W. 35. According to these witnesses a virulent propaganda was carried on by the workers of respondent No. 1 by holding out threats of dire violence to the electors in case respondent No. 1 was not elected. There are, however, three versions of this story. According to some of the witnesses the speakers at the election meetings stated that if respondent No. 1 was not elected the communist party would bring back the reign of terror which existed before the suspension of the popular Government in the State. Another set of witnesses stated that one Arjan Singh and a Patwari had been murdered by the communists and the speakers at party meetings made the propaganda that if electors did not vote for respondent No. 1 the same fate awaited them. A third set of witnesses watered down the story by saying that speakers told the electors that it would go hard with them if they did not support respondent No. 1 at the election. We have carefully considered the evidence on the record and find ourselves unable to rely on it. In the first place the evidence is too vague and general. No witness was able correctly to specify which speaker at the communist party meetings made what speech and when. It is significant that the petitioner failed to give any details of the speeches alleged to have been made by the workers of the respondent No. 1 either in the body of the petition or in annexure D. Even when he supplied fuller particulars, in his statement dated 16th October 1954, the petitioner did so on being prompted by respondent No. 3, as a note on the record shows. Then again as already pointed out there are three different versions of the kind of propaganda that was carried on by the respondent's workers. But the question, the answer to which really clinches the matter is whether it was possible for the workers of respondent No. 1 to carry on, with impunity the type of propaganda which is alleged by the petitioner. The alleged propaganda was nothing short of open incitement to violence against the electors. It must be remembered that at the time of election respondent No. 1 was a detenu in Nabha jail probably because of his political activities. It is reasonable to presume that the administration would be keeping a close watch on the activities of his minions at the time of the election. It is therefore difficult for us to believe that if the workers of respondent No. 1 had openly held out threats of violence they would have been spared by the police. Such open threats clearly exposed the speakers to the risk of criminal prosecution. It was even open to the petitioner to lodge a report against the speakers with the police. But nothing of the sort was done. In these circumstances we are very loath to accept the story of the petitioner and decide this issue against him.

Issue Nos. 10 and 12.—These issues were not pressed by the counsel for the respondents and are decided against them.

Issue No. 11.—Para. 18 of the petition shows that the petitioner has prayed for the following reliefs:—

- (a) That the election be declared to be wholly void or;
- (b) That the election of respondent No. 1 be declared void;
- (c) That the election of respondent No. 2 be declared void.

Learned counsel for the respondent invited our attention to sections 84 and 98 of the Representation of People Act and argued that it was permissible to the petitioner to claim only one of the reliefs mentioned in section 84. This is quite true, but there is no authority for the proposition that if a petitioner in an election petition claims more than one relief in contravention of the terms of section 84 the petition should be dismissed. We cannot, therefore, accept the contention that the petition is not maintainable in its present form. All that can be done in the circumstances of this case by the court is to grant the petitioner only one appropriate relief permissible under the law and to ignore the rest. But there is no ground for dismissing the petition merely for the reason that more than one relief has been claimed. We decide the issue accordingly.

Issue No. 15.—The furnishing of further particulars which led to the framing of this issue relates to matter covered by issue No. 9. Since we have decided issue No. 9 against the petitioner, the question whether it was permissible under the law to allow the petitioner to furnish further particulars after the expiry of limitation has assumed only an academic character and as such it is hardly necessary for us to go into it.

Issue No. 13.—In view of our finding on issue No. 1 the election of respondent No. 2 shall have to be declared void under section 100(2)(c) on the ground that his nomination papers were accepted in contravention of provision of Article 173B of the Constitution of India. Accordingly we declare the election of Shri Kirpal Singh respondent No. 2 to be void. This declaration will however not affect the election of respondent No. 1 Shri Dharam Singh. In this connection we cannot do better than to refer to A.I.R. 1954, S.C. 520. That was a case from a double member constituency. The Election Tribunal finding one of the returned candidates to be below the age of 25 declared the election of both the members to be void u/s 100(1)(c). This Lordships of the Supreme Court held that the election of the candidate who was below 25 years was void u/s 100(2)(c) and not u/s 100(1)(c) and that that finding did not effect the election of the other member. A.I.R. 1954, S.C. 520 is quite on all fours with the present case. Therefore following the same we declare the election of S. Kirpal Singh respondent No. 2 only to be void and uphold that of S. Dharam Singh respondent No. 1.

Issue No. 14.—As will be seen from the above findings there is no evidence that any of the returned candidates or their agents at the election was guilty of any corrupt or illegal practice. Therefore, so far as the respondents No. 1 and 2 are concerned on order under section 99(1)(ii) is called for. We find, however, that during the course of the election one Surjan Singh made an attempt at false personation *vide* copy of judgment Ex. PW32/1. But that judgment also shows that Surjan Singh was convicted u/s 171(F), I.P.C. According to section 141 of the Peoples Representation Act the conviction of a person under section 171(F) automatically entails his disqualification for voting for a period of 6 years. That being so, we do not find it necessary to pass any further orders against Surjan Singh u/s 99(1)(ii).

As a result of the foregoing findings we allow the petition against S. Kirpal Singh respondent No. 2 and declare his election to be void u/s 100(2)(c) of the Representation of Peoples Act on the ground that he did not possess the necessary age qualifications as prescribed by Article 173B of the Constitution of India. The petitioner shall get half the costs against him. The petition is dismissed against Shri Dharam Singh respondent No. 1 with costs. Pleader's fee: Rs. 250/- Announced to S. Dharam Singh respondent personally and S. Maluk Singh counsel for S. Kirpal Singh respondent. Petitioner to be informed.

At this stage Mr. Harbans Lal counsel for petitioner has turned up and he has been informed of the order.

(Sd.) CHHAKAN LAL, Chairman,

(Sd.) KUL BHUSHAN, Member.

(Sd.) G. M. KEKRE, Member.

The 9th June, 1955.

[No. 82/13/54/7326.]

By Order,

K. S. RAJAGOPALAN, Asstt. Secy.

